

REMARKS

Claims 1-7 and 21-43 are pending in the present application. Claims 1, 37, and 41 are the only independent claims.

In the Office Action, claims 1-7 and 21-43 are rejected under 35 U.S.C. 102(a) as anticipated by JP 2001-091736 ("Kusumoto").

As a preliminary, withdrawal of the finality of the Office Action is respectfully requested. The rejection over Kusumoto was not caused by amendments in the last response, but by the recent correction by the U.S. Patent and Trademark Office (USPTO) of an erroneous entry of a priority claim to the application published as Kusumoto. Thus, the rejection could have been made in a previous Office Action but for the USPTO error in entering an inexistent priority claim.

Making the rejection over Kusumoto final in this Office Action deprives the applicants of a fair opportunity to address the rejection. Accordingly, it is submitted that the finality of the Office Action should be withdrawn.

Further, reconsideration and withdrawal of the rejection is respectfully requested. JP 2001-091736 ("Kusumoto") is the Japanese application publication of the prior application JP 11-265412 filed on September 20, 1999 by the same inventors named in the present application, and published on April 6, 2001. Since the inventors named in Kusumoto are the inventors of the present application, Kusumoto does not establish that "the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent" as required in 35 U.S.C. 102(a).

In particular, a printed publication listed in 35 U.S.C. 102(a) excludes work derived from the inventors, because, by definition, such publication could not take place "before the invention

thereof by the applicant for patent.” Here, the work described in Kusumoto is not by another but by the same inventors named in the present application. Therefore, Kusumoto is not available as prior art under 35 U.S.C. 102(a).

It is noted that the English abstract of Kusumoto lists inventor names in Western characters which are erroneous machine-translations of the Japanese characters of the actual names of the inventors names listed on the Japanese publication. The actual names listed in Japanese characters on the Japanese publication are the same as the transliterated names in the present application. As a confirmation, the Kusumoto application is listed in the inventors’ declaration in the present application, with an indication that no priority is claimed.

In view of the above, it is submitted that the rejection should be withdrawn.

In conclusion, the invention as presently claimed is patentable. It is believed that the claims are in allowable condition and a notice to that effect is earnestly requested.

In the event there is, in the Examiner's opinion, any outstanding issue and such issue may be resolved by means of a telephone interview, the Examiner is respectfully requested to contact the undersigned attorney at the telephone number listed below.

Serial Number: 10/068,094

Group Art Unit: 2871

In the event this paper is not considered to be timely filed, the Applicants hereby petition for an appropriate extension of the response period. Please charge the fee for such extension and any other fees which may be required to our Deposit Account No. 50-2866.

Respectfully submitted,

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